

GAO

Report to the Chairman, Committee on
Education and the Workforce, House of
Representatives

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ELEMENTARY AND SECONDARY EDUCATION

Ed-Flex States Vary in Implementation of Waiver Process





**United States
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**Health, Education, and
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The Honorable William F. Goodling
Chairman
Committee on Education and the Workforce
House of Representatives

Dear Mr. Chairman:

Many Americans see the nation's public elementary and secondary schools as average at best. With large numbers of students graduating from school lacking the skills sought by employers, dissatisfaction with the educational system has fueled calls for widespread reform. Some educators and legislators believe that providing more regulatory flexibility to educators at the state and local levels will enable local school districts to direct more resources to the classroom and to adopt more innovative instructional approaches.

Reflecting this viewpoint, the Congress established the Education Flexibility Partnership Demonstration Act (Ed-Flex) in 1994. Under Ed-Flex, the Department of Education selected 12 states (the maximum number allowed) and authorized these states to grant waivers (temporary exemptions from certain federal requirements) to their local school districts. Recently proposed legislation would increase the number of states allowed to participate in Ed-Flex and expand somewhat the range of federal requirements that Ed-Flex states could waive. Some legislators have supported this proposal because they view Ed-Flex as highly successful. However, some education experts have expressed concern that key federal objectives (such as targeting federal resources to students most in need) could be compromised.

To help inform this debate, you asked us to (1) describe the scope of Ed-Flex and how it works, (2) describe the criteria states must meet to participate in Ed-Flex and identify the extent to which states not currently participating satisfy these criteria, (3) identify the number and type of waivers that Ed-Flex states have granted to their local school districts, (4) discuss participating states' views on the usefulness of Ed-Flex, and (5) identify issues for ensuring accountability if Ed-Flex is continued or expanded. To obtain this information, we interviewed Department of Education officials and reviewed agency documents, including the initial applications and subsequent annual reports from all the Ed-Flex states. We also conducted a survey of all 50 states. From all states (including the 38

states not participating in the Ed-Flex project), we obtained information on waivers of their own requirements that states have granted; from the 12 Ed-Flex states, we also obtained information on the implementation of Ed-Flex. We interviewed officials in four Ed-Flex states to obtain more detailed information. We also reviewed the Internet Web sites for the 50 state education agencies for information on their outreach efforts. We conducted our review between June 1998 and October 1998 in accordance with generally accepted government auditing standards.

Results in Brief

Under the Ed-Flex project, the state—rather than the federal Department of Education—is allowed to make decisions about whether particular school districts should be granted waivers of certain federal requirements. Although the federal government has established a large number of education programs, states can waive only certain specific requirements within six programs. In 5 of the 12 Ed-Flex states, the state can grant only individual waivers—that is, the state can grant a waiver only when an individual school district applies to the state for that specific waiver. In the remaining seven states, the state can grant statewide waivers—that is, the state can grant a waiver that can be used by any qualifying district in the state, without the requirement that the district demonstrate its specific need for the waiver.

To be eligible for selection as an Ed-Flex state, a state had to meet two criteria related to its ability to implement Ed-Flex in conjunction with overall education reform. Specifically, states were required to (1) have a plan for education reform that had been reviewed and approved by the federal Department of Education and (2) be able to modify any of their own state requirements that were associated with the federal waivers they granted. Currently, only 2 of the 38 nonparticipating states clearly satisfy these criteria and would be eligible to participate if the limit of 12 Ed-Flex states was eliminated.

States participating in the Ed-Flex project vary in the number of waivers they have granted to local school districts. For example, seven states have granted 10 or fewer individual waivers, while three others have granted 20 or more individual waivers. In addition, two states have granted multiple statewide waivers that have affected large numbers of school districts. The waivers granted by Ed-Flex states typically center around Title I of the Elementary and Secondary Education Act (ESEA), the largest federal education program. Title I provides funds to many school districts to give special educational assistance to economically and educationally

disadvantaged students. School districts seeking waivers have mainly sought to change how Title I funds can be used within a school or to change the distribution of Title I funds across schools.

States also vary in the degree to which they view these waivers as helpful. Some states told us that Ed-Flex is useful for creating a climate that encourages innovation and flexibility, even if few waivers are granted. However, others reported that because the authority to grant waivers is limited to specific programs and requirements, Ed-Flex is of limited value.

The Ed-Flex project creates challenges in holding districts accountable for the results of individual waivers and also in holding states, districts, and the federal Department of Education accountable for the results of federal programs (such as Title I) that are affected by these waivers. While some states have put in place specific goals (such as improving student achievement in math and science) and established clear and measurable objectives for evaluating the impact of waivers (such as improving average test scores by a certain number of points), many Ed-Flex states have not established any goals or have defined only vague objectives. In addition, because each state determines when waivers are appropriate, it is unclear how the federal government could address possible conflicts between states' use of the waiver authority and the policy objectives for the underlying federal program.

Background

The federal government has established a large number of education programs that support the efforts of the 50 states and the approximately 15,000 local school districts nationwide. Many of the federally funded education programs target specific groups of students. For example, the Title I program directs funds to many school districts to provide special educational assistance to educationally and economically disadvantaged students. Programs authorized under the Individuals With Disabilities Education Act (IDEA) ensure that children with disabilities are educated and provide financial assistance to states and school districts to help pay for the cost of educating these children. Other federal programs are targeted not to particular students but to particular subject areas. For example, the programs under the Carl D. Perkins Vocational-Technical Education Act support vocational education; the Eisenhower Professional Development Program provides funding for teacher training, with priority for math and science; the Safe and Drug Free Schools and Communities Program funds activities to prevent violence and substance abuse; and the Goals 2000 program provides financial support to states and school

districts for education reform efforts, including updating curriculum frameworks, developing standards and assessments, training teachers, and acquiring new technology.

Each of these federal programs establishes requirements with which states, local school districts, or both must comply in implementing the program. Some of these programs—such as the Safe and Drug-Free Schools and Communities Program—impose relatively few requirements on state and local officials. Other programs are more restrictive. For example, the Title I program limits how districts allocate federal dollars among schools, what services these dollars may fund, and which children may benefit. School districts also face a variety of federal requirements outside the scope of federal education programs. For example, school districts that participate in federal school lunch and breakfast programs receive federal assistance and, in return, must provide free and reduced-price meals to children from low-income families and ensure that the meals meet federal nutrition standards. School districts are also subject to federal worker protection legislation, as are other employers. Finally, school districts must comply with federal accessibility and environmental requirements in managing their buildings and facilities.

In earlier work on the range of federal requirements that affect school districts, we found that state governments often play a key role in administering federal programs and distributing federal dollars.¹ As part of their monitoring and oversight activities, states often impose additional requirements on school districts. For example, some states require school districts to submit more documentation on certain purchases made with federal funds than the federal regulations require. States also impose requirements in areas outside the scope of federal programs, including teacher certification and the length of the school year.

The Department of Education can waive certain federal requirements under specific programs; under Ed-Flex, the Department delegates some of its authority to the Ed-Flex states. Thus, in both Ed-Flex and non-Ed-Flex states, districts or schools may be granted an exemption from certain federal requirements for a given period of time. In Ed-Flex states, the district or school applies to the state for a waiver and the state makes the decision. In non-Ed-Flex states, similar waivers are available, but the district must apply to the federal Department of Education for a decision. Similarly, some state education agencies have the authority to waive

¹Elementary and Secondary Education: Flexibility Initiatives Do Not Address Districts' Key Concerns About Federal Requirements (GAO/HEHS-98-232, Sept. 30, 1998).

statutory or regulatory requirements imposed at the state level. For example, some states have granted waivers allowing exceptions to state-imposed requirements dealing with the length of the school day or year.

Ed-Flex Waiver Authority Is Limited in Scope

Under Ed-Flex, the Department of Education delegates a portion of its authority to grant waivers to the 12 participating states, allowing each of these states to make decisions about whether particular school districts should be granted waivers of covered federal requirements. According to the Department of Education, the main purpose of Ed-Flex is to assist the states in removing potential regulatory barriers to the successful implementation of comprehensive school reform plans. The Department of Education's Ed-Flex guidance says that because the Department emphasizes holding local school districts accountable for results in administering its waiver authority, Ed-Flex states are expected to do the same.

Although the federal government has established many education programs, Ed-Flex states can waive only certain specific requirements under six major programs: (1) Title I of the ESEA, which provides funding to help local school districts give additional educational assistance to disadvantaged children; (2) Title II of the ESEA, the Eisenhower Professional Development Program, which provides funding to local school districts to provide teacher training and professional development in math and science; (3) Title IV of the ESEA, the Safe and Drug-Free Schools and Communities Program, which provides funding for programs to prevent violence and substance abuse; (4) Title VI of the ESEA, Innovative Education Program Strategies, which provides funding to help school districts develop innovative programs in several areas, including adult education and family literacy; (5) part C of Title VII of the ESEA, Emergency Immigrant Education, which provides funding for the educational needs of immigrant children; and (6) the Carl D. Perkins Vocational-Technical Education Act, which provides support for vocational and technical education programs at the secondary and postsecondary levels. Ed-Flex states may also waive some requirements of the General Education Provisions Act and the Education Department General Administrative Regulations (EDGAR) that apply to these programs. For example, Texas waived one EDGAR provision that requires written approval before transferring training funds to another budget category.

Although these six major programs are included in Ed-Flex, many other key programs—including IDEA and the Bilingual Education Program—are not subject to Ed-Flex waiver authority. Programs and requirements administered outside the Department of Education (such as school lunch and breakfast programs or environmental requirements) are not included in Ed-Flex either. In addition, even for the six programs that are covered by Ed-Flex, states are not authorized to waive any federal regulatory or statutory requirement within these programs relating to (1) health and safety, (2) civil rights, (3) maintenance of effort, (4) comparability of services, (5) equitable participation of students and professional staff in private schools, (6) parental participation and involvement, and (7) distribution of funds to state or local education agencies.

Each state interested in participating in Ed-Flex submitted an application to the Department of Education. These applications described how the states would exercise their waiver authority, including how they would evaluate waiver applications from districts and how they would ensure accountability. The selection process took place over a 2-1/2-year period. The 1994 legislation authorized six Ed-Flex states. The Department of Education was required to award three of these six designations to states with populations of 3.5 million or greater, and the remaining three to states with populations of less than 3.5 million. The Department selected six state educational agencies—in Kansas, Massachusetts, Ohio, Oregon, Texas, and Vermont—for Ed-Flex status between February 1995 and March 1996. An additional six designations were authorized by the 1996 Omnibus Appropriations Act. However, there is no requirement that these designations be divided evenly between large and small states. The additional six states—Colorado, Illinois, Iowa, Maryland, Michigan, and New Mexico—were awarded Ed-Flex status between May 1996 and July 1997.

Although the same programs and requirements are covered in all Ed-Flex states, some states have the authority to grant waivers that apply more broadly than those in other states. Of the 12 Ed-Flex states, 7—Colorado, Maryland, Michigan, New Mexico, Ohio, Texas, and Vermont—have the authority to grant both statewide waivers (which can be used by any qualifying district in the state) and individual waivers (which can be used by only the district that applied and was approved for the waiver). The remaining five states—Illinois, Iowa, Kansas, Massachusetts, and Oregon—have the authority to grant waivers only to individual school

districts.² Because statewide waivers are granted as a state policy, rather than in response to specific requests from individual school districts, these waivers can be a more comprehensive tool for states to use in affecting how schools and districts operate.

Few States Meet Ed-Flex Eligibility Criteria

Although current law limits the Ed-Flex project to 12 states, recently proposed legislation would lift this restriction and allow any additional qualifying states to participate. However, in practical terms, Ed-Flex cannot be expanded to a significant number of additional states unless current eligibility criteria are loosened or eliminated or unless states make major changes. As table 1 shows, only two non-Ed-Flex states—Utah and Washington—clearly meet current eligibility criteria. An additional eight states may also be eligible, depending on their ability to waive certain state-imposed requirements. However, the remaining 28 states clearly do not meet Ed-Flex eligibility criteria. (For more detailed information on the status of non-Ed-Flex states with respect to specific eligibility criteria, see app. I.)

²The decision to grant an Ed-Flex state the authority to grant statewide waivers was made by the Department of Education as part of the application process. Several states did not apply for the authority to grant statewide waivers.

Table 1: States' Ed-Flex Status, 1998

States participating in Ed-Flex	States clearly eligible for but not participating in Ed-Flex	States potentially eligible for participation	States clearly ineligible for participation
Colorado	Utah	Alabama	Alaska
Illinois	Washington	Delaware	Arizona
Iowa		Georgia	Arkansas
Kansas		Hawaii	California
Maryland		Kentucky	Connecticut
Massachusetts		Minnesota	Florida
Michigan		New Jersey	Idaho
New Mexico		West Virginia	Indiana
Ohio			Louisiana
Oregon			Maine
Texas			Mississippi
Vermont			Missouri
			Montana
			Nebraska
			Nevada
			New Hampshire
			New York
			North Carolina
			North Dakota
			Oklahoma
			Pennsylvania
			Rhode Island
			South Carolina
			South Dakota
			Tennessee
			Virginia
			Wisconsin
			Wyoming

Under current law, a state is eligible for the Ed-Flex designation only if it meets two criteria. First, the legislation establishing Ed-Flex stipulates that only states that have an approved state education reform plan under the Goals 2000 program are eligible for Ed-Flex status. Department of Education officials told us that the primary aim of Ed-Flex is to support states' efforts to implement their comprehensive education reform plans. For this reason, these Department officials also believe that it is important for a state to have developed a comprehensive state improvement plan before being designated an Ed-Flex state.

Second, Ed-Flex states must have the ability to modify their own requirements consistent with the federal waivers they grant. Because states often impose their own requirements on school districts, initiatives to loosen federal requirements may not have the desired impact unless related state requirements are also modified. For example, Maryland

needed to waive certain state requirements on the use of state funds to allow schools in Baltimore to implement a federal Title I waiver. States are considered eligible for Ed-Flex status only if they have the ability to waive state-imposed education requirements associated with any federal education requirement that may be waived. However, many state education agencies do not have this authority. In our survey, only 12 of the 38 non-Ed-Flex states reported that they had the authority to waive provisions of both state education statutes and regulations. An additional 10 state education agencies reported that they could waive neither regulations nor statutes, which made them clearly ineligible for Ed-Flex. Another 16 state education agencies reported that they could waive state-imposed education regulations, but not statutes. According to Department of Education officials, these 16 states may or may not meet this eligibility criterion for Ed-Flex status, depending on the nature of the state regulatory process. If the state requirements that apply to schools and school districts appear largely or entirely in regulations rather than in statutes, Department officials told us, the state might be considered eligible for Ed-Flex. However, if many of the potentially related state requirements were imposed by statute, the state might not be eligible for Ed-Flex.

Number of Ed-Flex Waivers Varies by State, but Most Waivers Are Related to Title I

In some Ed-Flex states, the state education agency has granted relatively few waivers of federal requirements in comparison with the number of school districts in the state. In several other states, however, the waiver authority has been used more extensively. Some of the differences in the use of waivers among states may reflect differences in implementation of Ed-Flex—for example, variations in the amount of state resources devoted to Ed-Flex outreach and in the use of statewide waivers. The type of waivers that have been granted has been similar across states. These waivers typically involve redistributing Title I funds among schools in a district or broadening the criteria for eligibility for schoolwide projects under Title I.

States Differ in Number of Ed-Flex Waivers Granted

Most of the Ed-Flex states granted relatively few waivers during the past 2 to 3 years, compared with the number of school districts in the states; however, some states have been more active than others in granting waivers. Three states received their Ed-Flex authority in July 1997 and thus had only limited time to implement their waiver process. Of the nine states that had been participating in Ed-Flex for more than 1 year as of January 1998, four granted 10 or fewer individual waivers. However, the

other five states have been more active in their use of Ed-Flex. Kansas and Maryland have granted over 20 individual waivers each—an especially high total for Maryland considering the small number of school districts in the state. Texas and Ohio have not only granted a relatively high number of individual waivers but have also granted statewide waivers that have affected larger numbers of school districts. For example, 180 districts in Ohio have taken advantage of a statewide waiver that broadens eligibility for schoolwide programs under Title I. Table 2 shows when each state received its Ed-Flex authority, the number of school districts in the state, and the number of individual and statewide waivers granted from January 1995 through December 1997.

Table 2: Data on Ed-Flex States, 1995-97

State	Date state entered Ed-Flex	Number of regular school districts in the state ^a	Number of waivers granted to individual school districts	Number of waivers granted on a statewide basis
Colorado	7/96	176	6	1
Illinois	7/97	905	1	^b
Iowa	7/97	383	0	^b
Kansas	8/95	304	20	^b
Maryland	5/96	24	22	0
Massachusetts	9/95	248	14	^b
Michigan	7/97	593	0	1
New Mexico	8/96	89	1	0
Ohio	9/95	611	14	2
Oregon	2/95	233	2	^b
Texas	1/96	1,044	40	8
Vermont	3/96	251	10	1

^aRegular school districts are agencies responsible for providing free public education for school-aged children residing in their jurisdiction. This category excludes local supervisory unions that provide management services for a group of associated school districts, regional education service agencies, state and federally operated institutions, and other agencies that do not fall into these groupings.

^bThis state does not have the authority to grant statewide waivers.

The variation among states in the number of waivers granted may reflect differences in three key factors: state outreach efforts, use of waivers for state-imposed requirements, and use of statewide waiver authority. These factors can either promote or inhibit use of Ed-Flex by local school districts.

Before districts can use Ed-Flex, they need to know which requirements can be waived and how to apply for a waiver. Because states vary in their outreach efforts, districts in some states may have greater access to this information than districts in others. For example, one Ed-Flex state posted detailed information on Ed-Flex in a prominent position on its Web site, in addition to other outreach efforts, including mailings and presentations at education conferences and meetings. However, of the 12 Ed-Flex states, only 4 mentioned Ed-Flex or waivers of federal requirements on their Web site.

The use of waivers for state requirements may also promote districts' ability and willingness to apply for waivers of federal requirements under Ed-Flex. According to several state officials we interviewed, an active state waiver program makes districts more familiar with the concept of waivers and more comfortable with applying for them. However, not all Ed-Flex states granted many state waivers. For example, Iowa, Illinois, Michigan, and Texas have granted hundreds of waivers for state requirements, but other states, including Kansas and Maryland, have granted very few or none. Of the 10 Ed-Flex states that supplied data on state waivers, 5 granted 40 or more waivers in 1997; however, the other 5 states granted fewer than 10 waivers per year. In our survey of the 50 state education agencies, we found that the non-Ed-Flex states with the ability to grant waivers from their own state requirements also varied considerably in how frequently they used this authority. (For more information on state-level waiver programs, see app. II.)

Finally, the use of statewide waiver authority can encourage school districts to take advantage of federal waivers. In the seven Ed-Flex states that have the authority to grant statewide waivers, any qualifying school district can take advantage of a statewide waiver without having to demonstrate specific need for that waiver. In some of these states, many more school districts have used the statewide waivers than have applied for individual waivers. For example, Texas has waived four record-keeping and administrative requirements on a statewide basis, and hundreds of school districts in Texas have taken advantage of these waiver provisions.

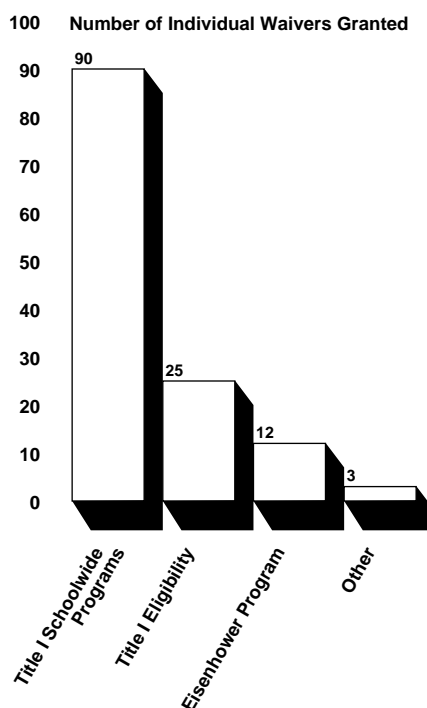
Most Ed-Flex Waivers Involve Title I

Most of the Ed-Flex waivers granted have centered around Title I, the largest federal program for elementary and secondary education. For example, waivers of the provisions for schoolwide projects under Title I accounted for the largest number of Ed-Flex waivers. When operating Title I as a schoolwide project, the school can use its Title I funds to implement

a plan to improve the education of all students in the school, not just those students that are Title I-eligible. Under current law, a school can operate as a Title I schoolwide project only if 50 percent of the students in the school or in the school attendance area are from low-income families. Waivers allow schools that do not meet this threshold to become eligible to use schoolwide projects. Three Ed-Flex states have granted statewide waivers to expand schoolwide projects; in addition, schoolwide projects account for nearly 70 percent of approved individual waivers.

Another common type of waiver allows school districts to distribute Title I funds according to criteria established by the district, rather than adhering solely to the statutory formula. For example, one school in Massachusetts was not eligible for Title I services for the 1997-98 school year, although it had been eligible in the past; further, the school was expected to become eligible again in the 1998-99 school year, when the district was to begin implementing a voluntary desegregation plan. The school district received a 1-year waiver to continue providing Title I funds to this school, rather than disrupt services for 1 year. Some school districts have also received waivers of requirements under the Eisenhower Professional Development Program that require them to give priority in the use of Eisenhower funds to math and science subject areas. Figure 1 shows the number of individual waivers approved by Ed-Flex states for Title I schoolwide programs, Title I eligibility, the Eisenhower Professional Development Program, and other areas.

Figure 1: Types of Individual Waivers Granted Under Ed-Flex, 1995-97



Source: Annual reports provided by Ed-Flex states to the Department of Education.

Ed-Flex States Generally Report Positive Experiences, but Some Say Ed-Flex Is of Limited Use

Officials from participating states generally reported positive experiences with Ed-Flex. Two states that have used Ed-Flex extensively—Ohio and Texas—told us that the waivers they granted under Ed-Flex had a positive impact. For example, a Texas official told us that Texas' statewide waiver to allow more flexible use of federal teacher training funds has allowed districts to better direct professional development dollars to those areas where they are needed the most.

According to several officials from these and other Ed-Flex states, Ed-Flex is valuable, regardless of the number of waivers granted, because it promotes a climate that encourages state and local educators to explore new approaches, frequently making better use of the flexibility that already exists within state and federal requirements. One state official reported that Ed-Flex motivates school districts to consider nontraditional ways of using federal resources to enhance educational services. Similarly, Ohio officials reported that as a result of examining the relevant laws and

regulations, many districts discovered that they already had the ability to do what they want without a waiver.

However, some officials from Ed-Flex states commented that the program creates false hopes and expectations, because the waiver authority is limited to certain specific federal requirements. For example, one state official told us that it is the cumulative effect of all regulations combined, rather than any single requirement, that causes problems for school districts. Therefore, he believes that Ed-Flex's emphasis on identifying specific individual requirements makes the project less effective. In another Ed-Flex state, staff told us that the Ed-Flex waiver authority is too narrow to do much good. Officials in several states reported that Ed-Flex would be more helpful if the waiver authority were extended to other programs, such as special education or bilingual education. For example, while Texas has used its waiver authority to streamline administrative provisions for programs covered by Ed-Flex, the standard administrative requirements remain in effect for other programs that are not covered by Ed-Flex. A Texas state official told us that extending Ed-Flex authority to other programs would allow Texas districts to make even more progress in reducing administrative effort.

These reactions to Ed-Flex are consistent with the findings in our September 1998 report on how states and school districts have used waivers and other federal flexibility initiatives.³ In our work on how federal requirements affect school districts, we found that school districts' concerns did not focus on any single program or requirement; instead, they extended across several broad areas, including obtaining key information, working with limited funds, and overcoming logistical and management challenges. Whether granted by the Department of Education or by the state under Ed-Flex, waivers do not address these areas of concern because waivers are limited to a specific set of programs and requirements, and because districts' major concerns often lie outside the scope of the waiver authority.

Structure of Ed-Flex Poses Challenges for Ensuring Accountability

In recent years, political leaders and government officials have become increasingly concerned with improving government management and increasing accountability for program results at the federal, state, and local levels. At the federal level, for example, the 1993 Government Performance and Results Act (the Results Act) requires federal agencies to specify strategic goals and related performance objectives and to measure

³GAO/HEHS-98-232, Sept. 30, 1998.

and report their progress in meeting these goals. Proponents of the Results Act anticipated that setting clearly defined goals (such as increasing reading proficiency for all students) would serve to focus program efforts and that establishing specific, measurable objectives (such as having all fourth-grade students pass a basic reading test) could be used to assess progress toward these goals and thus enhance accountability.

Ed-Flex poses unique challenges for achieving and maintaining accountability in this results-focused, data-driven environment. The Ed-Flex legislation and the guidance provided to Ed-Flex states by the Department of Education highlight two types of accountability. First, states are to ensure that districts and schools that receive waivers are held accountable for achieving intended results—that is, for fulfilling the purpose for which the waiver was granted. Second, the federal government is accountable for the overall results of the federal programs affected by Ed-Flex waivers.

Both the legislation and the guidelines represent the importance of both types of accountability but provide the states with little specific direction on how to apply these concepts in implementing the waiver program. Providing more specificity could be difficult, however, because of the variation in the types of waivers that are allowed and the circumstances prompting the waivers. In addition, providing explicit federal direction may affect states' discretion in designing their own processes for overseeing and evaluating Ed-Flex waivers. Consequently, Ed-Flex allows the states broad latitude in developing accountability systems with limited federal oversight, and states vary widely in how they establish goals, track districts' progress, and protect underlying program purposes.

Ed-Flex States Vary in How They Establish Goals and Objectives for Federal Waivers

Wide variation exists among Ed-Flex states regarding whether they have established clearly defined goals to measure the results of waivers received by districts and schools. Some states and districts have expressed their goals only in the vaguest of terms, while others have been more precise. For example, in one state where a district was granted a schoolwide program waiver, only nonspecific goals were reported, such as “a commitment to the identification and implementation of programs that will create an environment in which all students actualize academic potential.” In contrast, the goals listed for two school districts in another state that received similar waivers to implement schoolwide programs were “to improve reading comprehension” and to ensure that “students will become better readers and more proficient in math skills.”

States also differ in the degree to which they use specific and measurable objectives to assess whether districts have achieved their goals. Of the 12 Ed-Flex states, 5 have set no specific objectives at all, nor have they specified whether the results of the waivers will be reviewed for the district, the school, or groups of students. For example, one state has stated that it is able to review standardized test results only for the state as a whole. In another state, officials reported only that districts are expected to submit reports that describe their progress.

Other Ed-Flex states have established more specific objectives, but these states differ in whether they target these objectives to a group of students, a specific school, a group of schools, or the district. For example, one state evaluates schools receiving waivers for schoolwide programs as a group, by comparing the overall performance of students in that group of schools with the performance of a control group of similar schools that did not receive such waivers. Another state expects an individual school receiving schoolwide program waivers to achieve a specific increase in the overall percentage of students from that school to pass the statewide assessment test. Only one Ed-Flex state—Texas—has set specific numerical criteria that are closely tied to both the schools or districts and the specific students affected by the waiver. For example, Texas expects all districts that receive waivers under Title I to make annual gains on test scores so that in 5 years 90 percent of all students will pass the state's assessment tests in reading and mathematics. In addition, Texas' districts must make annual gains so that at the end of the same 5-year period 90 percent of African-American students, 90 percent of Hispanic students, 90 percent of white students, and 90 percent of economically disadvantaged students will pass these tests.

Federal Oversight Under Ed-Flex Provides Limited Information on Program Results

Currently, the Department of Education's oversight of Ed-Flex waivers is limited to requiring Ed-Flex states to submit an annual report to the Department summarizing the waivers granted in the previous calendar year. These reports vary in the level of detail they provide—both on the process for reviewing waivers and on the waivers that have been granted. As a result, the Department has considerable information available on some states' activities and very limited data on other states' implementation of Ed-Flex. Aside from this reporting requirement, the Department's role in Ed-Flex is generally confined to providing technical assistance and information when requested by the states.

The Department's limited oversight role in the Ed-Flex project raises issues about ensuring accountability for the results of federal programs to which those waivers apply. Although the states play a key role in administering key federal programs such as Title I and the Eisenhower Professional Development Program, the Department of Education maintains an assistance and oversight role and is accountable for program results. In addition, the legislation authorizing Ed-Flex prohibits Ed-Flex states from waiving requirements if such a waiver would be inconsistent with the purpose of the underlying federal program. For example, some education experts have expressed concern that waivers of Title I targeting requirements could, if used indiscriminately, dilute Title I funds and undermine the program's ability to direct scarce federal dollars to the children most in need. Under Ed-Flex, each state independently decides whether its waivers are consistent with the purpose of the underlying federal program, creating the potential for inconsistencies across states.

Department of Education officials told us that they believe the 12 current Ed-Flex states have used their waiver authority carefully and judiciously. However, both federal and state officials acknowledged the potential for states to act less carefully, especially if Ed-Flex is expanded to states that are less knowledgeable or prepared. It is unclear how the Department of Education, in its current limited role, could address such issues. However, expanding the role of the Department of Education could conflict with the intention of Ed-Flex by limiting the discretion allotted to the states.

Agency Comments

The Department of Education provided written comments on a draft of this report. In its comments, the Department stated that we should note that Ed-Flex was enacted with the understanding that there would be accountability in exchange for increased flexibility. We added language to further emphasize this understanding. The Department also described the process under which the Department reviewed states' applications for Ed-Flex status: specifically, the eligibility for Ed-Flex and the selection process. We added more detailed information on this point.

The Department also expressed concern that the report focused on the few requirements that may not be waived rather than on the broad scope of program-related requirements that are subject to waivers. Although Ed-Flex waivers are available for many requirements within six major education programs, other important requirements within these same programs (including maintenance of effort, parental participation and involvement, and distribution of funds to local and state education

agencies) are not subject to waivers. Other key federal programs—including IDEA, school lunch and breakfast programs, and bilingual education—are not subject to Ed-Flex at all. As we reported, officials from several Ed-Flex states expressed frustration with these limitations to the Ed-Flex waiver authority. Similarly, the Department stated that although waivers were not designed to address some of the school districts' concerns, this is not a deficiency in Ed-Flex but rather an indication that school districts also need help in other areas. However, officials from several Ed-Flex states commented that, given many of the issues they would like to address, Ed-Flex creates false hopes.

Finally, the Department suggested that instead of providing information on the number of waivers granted, we should provide information on the number of schools affected by the waivers. Because it is generally the school district that applies for Ed-Flex waivers, we believe that presenting information at the district level is more appropriate. In its report on the Goals 2000 program, where it presented information on Ed-Flex, the Department took a similar approach and reported the number of waivers approved. The complete text of the Department's comments appears in appendix III.

We are sending copies of this report to the Secretary of Education, relevant congressional committees, and other interested parties. If you or your staff have any questions concerning this report, please call me; Harriet C. Ganson, Assistant Director; or one of the individuals listed in appendix IV on (202) 512-7014.

Sincerely yours,

A handwritten signature in cursive script that reads "Carlotta Joyner".

Carlotta C. Joyner
Director, Education and
Employment Issues

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Abbreviations

EDGAR	Education Department General Administrative Regulations
ESEA	Elementary and Secondary Education Act
GED	general equivalency diploma
IDEA	Individuals With Disabilities Education Act

Non-Ed-Flex States: Goals 2000 Plans, Waiver Authority, and Ed-Flex Selection Criteria

State	Status of state plan
	State has an approved Goals 2000 state improvement plan
Alabama	X
Alaska	
Arizona	X
Arkansas	
California	
Connecticut	
Delaware	X
Florida	
Georgia	X
Hawaii	X
Idaho	
Indiana	
Kentucky	X
Louisiana	
Maine	
Minnesota	X
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	X
New Hampshire	
New Jersey	X
New York	
North Carolina	
North Dakota	X
Oklahoma	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Utah	X
Virginia	X
Washington	X

Appendix I
Non-Ed-Flex States: Goals 2000 Plans,
Waiver Authority, and Ed-Flex Selection
Criteria

Status of waiver authority			Does state meet Ed-Flex criteria?		
State can waive both statutes and regulations	State can waive regulations but not statutes	State can waive neither statutes nor regulations	State clearly meets both criteria—has plan and waiver authority	State may meet criteria—has plan and some waiver authority	State clearly does not meet both criteria—has no plan or waiver authority
	X			X	
	X				X
		X			X
	X				X
X					X
X					X
	X			X	
X					X
	X			X	
	X			X	
		X			X
X					X
	X			X ^a	
	X				X
X					X
	X			X	
		X			X
	X				X
		X			X
	X				X
		X			X
		X			X
	X			X	
	X				X
X					X
		X			X
X					X
X					X
	X				X
		X			X
	X				X
X					X
X			X		
		X			X
X			X		

(continued)

Appendix I
Non-Ed-Flex States: Goals 2000 Plans,
Waiver Authority, and Ed-Flex Selection
Criteria

State	Status of state plan
	State has an approved Goals 2000 state improvement plan
West Virginia	X
Wisconsin	
Wyoming	
Total	14

Appendix I
Non-Ed-Flex States: Goals 2000 Plans,
Waiver Authority, and Ed-Flex Selection
Criteria

Status of waiver authority			Does state meet Ed-Flex criteria?		
State can waive both statutes and regulations	State can waive regulations but not statutes	State can waive neither statutes nor regulations	State clearly meets both criteria—has plan and waiver authority	State may meet criteria—has plan and some waiver authority	State clearly does not meet both criteria—has no plan or waiver authority
	X			X	
X					X
		X			X
12	16	10	2	8	28

^aKentucky applied for Ed-Flex status but withdrew its application upon determining that it did not meet the criteria for selection because its authority to waive state regulations was too limited.

Sources: For status of state Goals 2000 plan, Department of Education; for state waiver authority, our survey of state education agencies.

Number and Types of Waivers Granted for State-Imposed Requirements, 1997

State	Does state have authority to waive state requirements?	Number of regular school districts in state	Number of state waivers granted	Types of waivers most commonly granted
Ed-Flex States				
Colorado	Yes	176	State did not provide data.	Rules governing charter schools.
Illinois	Yes	905	466	State-mandated holidays; daily physical education requirement.
Iowa	Yes	383	395	Requirements to offer third and fourth year of foreign language; changes to the length of school day or year; block scheduling of physical education periods.
Kansas	Yes	304	0	No waivers were granted.
Maryland	Yes	24	0	No waivers were granted.
Massachusetts	Yes	248	40	Requirements concerning the age span of class groups or class size.
Michigan	Yes	593	381 ^a	Administrative rules that apply to special education.
New Mexico	Yes	89	1	Changes to the length of the school day or year; class load and teaching load requirements.
Ohio	Yes	611	State did not provide data.	Changes to the length of the school day or year.
Oregon	Yes	233	8	Changes to the length of the school day.
Texas	Yes	1,044	1,606	Changes to the length of the school day or year to make additional time available for staff development.
Vermont	Yes	251	8	State did not provide data.
Non-Ed-Flex States				
Alabama	Yes	127	67	Changes to the length of the school day or year; student course requirements; state special education requirements.
Alaska	Yes	55	0	No waivers were granted.
Arizona	No	214	State does not have waiver authority.	No waivers were granted.
Arkansas	Yes	311	15	Class size and staffing requirements; state curriculum requirements; teacher certification requirements.
California	Yes	999	1,600	Staffing requirements; student testing; requirements for summer school meal program; rules concerning placing special education students in certain private schools.

(continued)

**Appendix II
Number and Types of Waivers Granted for
State-Imposed Requirements, 1997**

State	Does state have authority to waive state requirements?	Number of regular school districts in state	Number of state waivers granted	Types of waivers most commonly granted
Connecticut	Yes	166	State did not provide data.	Curriculum requirements; charter schools.
Delaware	Yes	19	8	State special education requirements; certification requirements; physical education requirements; changes to the length of the school day or year.
Florida	Yes	67	39	Changes to the school day to accommodate block scheduling.
Georgia	Yes	180	185	Changes to the school day to accommodate block scheduling; high school graduation requirements.
Hawaii	Yes	1	5	State did not provide data.
Idaho	No	112	State does not have waiver authority.	No waivers were granted.
Indiana	Yes	292	772	Curriculum requirements.
Kentucky	Yes	176	State did not provide data.	State did not provide data.
Louisiana	Yes	66	State did not provide data.	Age requirements for general equivalency diploma (GED) testing; curriculum changes; teacher certification.
Maine	Yes	228	State did not provide data.	Requirements concerning the age span of class groups; class size; tutorial services.
Minnesota	Yes	383	3	Special education requirements; superintendent licensing; extended school year.
Mississippi	No	153	State does not have waiver authority.	No waivers were granted.
Missouri	Yes	525	14	Certification requirements for Title I teachers.
Montana	No	465	State does not have waiver authority.	No waivers were granted.
Nebraska	Yes	653	1	Staffing requirements.
Nevada	No	17	State does not have waiver authority.	No waivers were granted.
New Hampshire	No	164	State does not have waiver authority.	No waivers were granted.
New Jersey	Yes	582	297	State special education requirements.
New York	Yes	709	156	Curriculum and testing requirements.

(continued)

**Appendix II
Number and Types of Waivers Granted for
State-Imposed Requirements, 1997**

State	Does state have authority to waive state requirements?	Number of regular school districts in state	Number of state waivers granted	Types of waivers most commonly granted
North Carolina	Yes	119	5	Restrictions on the amount of funds a district can carry over from one fiscal year to the next.
North Dakota	No	234	State does not have waiver authority.	No waivers were granted.
Oklahoma	Yes	548	200 ^b	Changes to the length of the school day or year; teaching hours; requirements concerning library and counseling services.
Pennsylvania	Yes	500	796	Changes to the length of the school day or year.
Rhode Island	Yes	36	22	Changes to the length of the school day or year.
South Carolina	No	95	State does not have waiver authority.	No waivers were granted.
South Dakota	Yes	173	30	Changes to the length of the school day or year.
Tennessee	Yes	138	5	State requirements for local maintenance of effort in schools operating as schoolwide programs.
Utah	Yes	40	State did not provide data.	Changes to the length of the school day or year; teacher certification requirements; some financial requirements.
Virginia	No	132	State does not have waiver authority.	No waivers were granted.
Washington	Yes	296	49	Changes to the length of the school day or year.
West Virginia	Yes	55	61	State requirements concerning instructional materials.
Wisconsin	Yes	426	6	Changes to the length of the school day or year.
Wyoming	No	49	State does not have waiver authority.	No waivers were granted.

^aData apply to the period Sept. 1996 through Feb. 1998.

^bData apply to the 1997-98 school year.

Sources: For number of regular school districts, National Center for Education Statistics Common Core of Data; for state waiver authority, our survey of state education agencies.

Comments From the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

NOV 4 1999

Ms. Carlotta C. Joyner, Director
Education and Employment Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Joyner:

Secretary Riley has asked me to respond to your request for comments on the draft report, Ed-Flex States Vary in Implementation of Waiver Process. The Department has reviewed this report and is providing general comments below. Editorial comments are being provided separately on the particular pages of the report, which are enclosed.

- ▶ In stating the purpose of the Ed-Flex program in the transmittal letter, it should be noted that Ed-Flex was enacted with the understanding that there would be accountability in exchange for increased flexibility. The discussion of States' use of the waiver authority on pages 17-19 should also mention the accountability measures that are associated with granting individual and statewide waivers. It is misleading to suggest that Ed-Flex was passed solely to provide districts with more flexibility.
- ▶ The report confuses the "eligibility" requirements for Ed-Flex and the process for "selection" of States to participate in the program. To be eligible to participate in Ed-Flex, a State had to meet the two criteria described on page 3 of the report. However, to be selected, a State had to be eligible and had to submit an Ed-Flex plan that described how it would exercise the waiver authority, including describing how the State would evaluate waiver applications from districts and how it would ensure accountability for the activities and goals in the plan. In addition, the language on page 3 (and elsewhere in the report) should be clarified to convey that States--as part of their Ed-Flex applications--established their intent to grant individual waivers or statewide waivers. Some States did not seek or desire Statewide waivers. Thus, the State--not the Federal Department of Education--made this determination.
- ▶ I am concerned that the report focuses on the few requirements that may not be waived--e.g. health and safety, civil rights, etc.--rather than on the broad scope of program-related requirements that are subject to waivers. In addition, on page 21, the report gives some examples of school district concerns such as obtaining key information, working with limited funds, and overcoming logistical and management challenges that waivers were not designed to address. In these cases, the problem is not that Ed-Flex is deficient, but that school districts also need help in other areas; the report should be clearer on this point.

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202-6100

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Now on p. 5.

Now on p. 6.

Now on pp. 6-7.

Now on pp. 17-18.

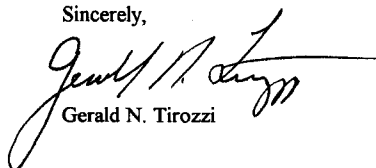
Appendix III
Comments From the Department of
Education

Now on p. 18.

- ▶ The language on page 14 that indicates some Ed-Flex States have granted relatively few waivers in comparison to the number of school districts may be misleading. It would be more informative to report the number of schools affected by the waivers rather than the number of waivers granted.

We appreciate the opportunity to review and comment on the report.

Sincerely,



Gerald N. Tirozzi

Enclosure

GAO Contacts and Staff Acknowledgments

GAO Contacts

Harriet C. Ganson, Assistant Director
Sarah L. Glavin, Senior Economist

Staff Acknowledgments

Arthur T. Merriam, Jr., managed the state survey and cowrote the report; Linda W. Stokes assisted in designing the survey and in gathering the information on the design of Ed-Flex and the waivers granted by the states.

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